In the Supreme Court of the United States

OCTOBER TERM, 1957

[redacted], PETITIONER

v.

[redacted]

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

J. LEE RANKIN
Solicitor General,
Department of Justice,
Washington 25, D. C.

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OCTOBER TERM, 1957

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

AVONDALE MILLS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Fifth Circuit entered on March 29, 1957, partially denying enforcement of an order issued by the Board against Avondale Mills (R. 124-130).[1]

OPINIONS BELOW

The opinion of the court below, *infra*, pp. 11-16, is reported at 242 F. 2d 669. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 60-102, 115-130) are reported at 115 NLRB 840.

JURISDICTION

The court below entered its judgment on March 29, 1957 (*infra*, p. 16), and denied a petition for rehear-

[1] "R" refers to the transcript of record; "B.A." and "R.A." refer to the appendices to the briefs filed by the Board and respondent, respectively, in the court of appeals.

ing on May 3, 1957 (*infra*, p. 21). The jurisdiction of this Court is invoked under 28 U.S.C. 1254, and Section 10(e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether a rule prohibiting employees from engaging in pro-union solicitation during working hours, otherwise valid under the tests enunciated by this Court, is invalidly applied if the employer himself is engaging in unlawful, coercive, anti-union solicitation during working hours.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, *et. seq.*), are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

STATEMENT

I. The Board's Findings of Fact

A. *Respondent counters a union campaign by invoking a rule against pro-union solicitation during working hours*

In the fall of 1954, the Textile Workers of America, AFL-CIO, herein called the Union, began an organizational campaign at respondent's mills in Sylacauga, Pell City, and Alexander City, Alabama (R. 70-71, 74; B.A. 11-13). On November 10, 1954, the Union gave union membership cards to some 60 of respondent's employees working in two mills located in Sylacauga (*ibid.*).

Beginning November 11, the day after the distribution of union cards, respondent called a number of employees individually into the office of a management representative, and there read them the following statement (R. 116-117; B.A. 19-20, 91):

> It has come to our attention that you are attempting to solicit union membership in this plant during working hours, or while the employees that you are attempting to solicit are at work. This is

a violation of plant rules and any future instances of this sort will result in prompt dismissal.

In each case the individual thus summoned had allegedly been soliciting for the Union; respondent did not publicize its anti-solicitation rule to the employees as a group (R. 117-118; B.A. 59, 19-20, 42-43, 76-77, 85, 108-110, 131-132, 135, 146-147).

B. *Respondent, notwithstanding its rule against pro-union solicitation, engages through its supervisors in anti-union solicitation during working hours*

Although respondent thus promulgated or revived a rule against campaigning for the Union during working hours,[2] its supervisory personnel engaged in anti-union campaigning while the employees were at work, threatening employees with loss of benefits and with a shutdown of the plant if the Union succeeded in organizing it. Thus Supervisor Cabiness told employee Dupree, while the latter was at work in the spinning room, that respondent "would never recognize the union . . . they would cut those frames up and sell them for junk before they would let the union come in" (R. 85; B.A. 107-108). Cabiness also told employee Price, in the tool room, that if the Union "came to Avondale Mills the mill would shut down" (R. 84; B.A. 98). Foreman Forbus told employee Rich, who was "running the creel job . . . at that time", that "If it goes union,

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[2] The record contains conflicting testimony as to whether there had been, prior to the Union's organizing campaign, a plant rule against solicitation during working hours (B.A. 36, 44, 77, 82, 87, 90, 101, 105-106, 109, 118-119, 132-133, 136, 138-139, 141-145, 147-148, 151, 155).

this plant will shut down and we won't have any jobs" (R. 81-82; B.A. 18). In the same vein, Assistant Foreman Brooks told employee McCoy, who was "working at the time," that if the mill became unionized the employees would lose their "old age benefits, the hospital and the profit-sharing would be eliminated of course" (R. 87; B.A. 144). While employee Connell was at work, Foreman Forbus asked him what he thought he would gain by joining the Union, and said that "the mill would probably shut down if it went union down there" (R. 76; B.A. 83-84). Employee Bass' supervisor asked her, while she was working, what she thought about the Union, and whether all her people belonged to it (R. 87; B.A. 140). Respondent also sent a personnel clerk to solicit employee Jones' withdrawal from the Union; this solicitation likewise occurred while Jones was "on [his] job" (R. 93; B.A. 45).

C. *Respondent enforces its rule against pro-union solicitation by discharging three employees*

As noted above, early in November respondent had told several employees that they were not to engage in pro-union solicitation during working hours. Between November 16 and 18, respondent discharged three employees, Jones, Rich, and Parker, allegedly for violating the no-solicitation rule (R. 89-91, 94; B.A 22-25, 46-47, 114-115). According to respondent's version of the three infractions, Rich was discharged for asking an elevator man if he wanted a union, an event which occurred while Rich was riding in the elevator on his way to obtain a box necessary to his work (R. 90; R. A. 38-39). Parker was discharged for asking an em-

ployee if he would sign a union card and for telling him why the Union would be good for the Company; this took place at a time when Parker had completed his work for the day and the other employee had just begun (B.A. 155-159). Jones was discharged for allegedly asking employee Nicholson whether he had filled in a card given to him on the previous day by employee Dupree outside the gate (B.A. 175-176).[3]

II. The Board's Conclusions and Order

The Board found that respondent violated Section 8(a)(1) of the Act by interrogating employees concerning their union membership, views, and activities; threatening them with loss of benefits, loss of employment and a plant shutdown, if the Union organized its mills; and soliciting employees to withdraw from the Union (R. 100, 116-117). The Board further found that respondent "was prompted to invoke the no-solicitation rule by a desire to prevent unionization of its employees rather than by consideration of plant production and efficiency," noting that "anti-union solicitation was not made an offense," and that respondent's supervisors engaged in anti-union solicitation during working hours by threatening employees with reprisal for union activities and interrogating them concerning their union membership and sympathies (R. 118, 119, 120). Having found that respondent's no-solicitation rule was discriminatorily invoked and applied, the Board concluded that the discharges of

[3] When Jones, who denied violating the rule, asked his supervisor whom he could see to prove his innocence, he was told to "go see [the Union organizer]" (R. 83; B.A. 36, 47-48). The Board found that Jones had not engaged in the prohibited solicitation, and that in any event his discharge was caused by his other union activities (R. 122-123).

Jones, Rich, and Parker, allegedly for violating the rule, were violative of Section 8(a)(3) and (1) of the Act (R. 120).[4] Finally, the Board concluded that even if the no-solicitation rule had been validly invoked and applied, the evidence with respect to Jones established that he was unlawfully discharged because of his adherence to the Union, and not because of his alleged violation of the rule (R. 121-123).

The Board accordingly ordered respondent to cease and desist from violating Sections 8(a)(1) and (3), to reinstate the three dischargees with back pay, and to post appropriate notices (R. 125-130).

III. The Decision of the Court Below

Noting that respondent did not challenge the Board's findings with respect to the coercive conduct of respondent's supervisors, the court below enforced the Board's order insofar as it rested upon respondent's unlawful threats and interrogation of employees (*infra*, p. 13). The court likewise agreed with the Board that respondent had unlawfully discharged Jones for union activity, and enforced the order insofar as it directed his reinstatement with back pay (*infra*, pp. 15-16). But, notwithstanding the coercive anti-union campaigning by the supervisors during working hours, the court below held that violation of the no-solicitation rule by employees furnished the company a valid ground for their discharge (*infra*, pp. 14-15). The court accordingly set aside the Board's order insofar as it directed respondent to reinstate Rich and Parker with back pay and to cease discriminatorily enforcing the no-solicitation rule (*infra*, pp. 15-16).

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[4] On this aspect of the case, the Board's conclusion was contrary to that which had been reached by the Trial Examiner. R. 97-99.

REASONS FOR GRANTING THE WRIT

1. The instant case presents another facet of the problem which this Court will examine in *National Labor Relations Board* v. *United Steelworkers of America, CIO, and NuTone, Incorporated,* No. 785, October Term, 1956, certiorari granted, 353 U. S. 921. In *NuTone,* the issue is whether an otherwise valid rule against the distribution of union literature in a plant is rendered invalid by the employer's own distribution of *non-coercive* anti-union literature.[5] In the instant case, the issue is whether an otherwise valid no-solicitation rule is rendered invalid if the employer engages in *coercive* anti-union solicitation. The same considerations which prompted the grant of certiorari in *NuTone* should lead to a similar grant here.

Since the Court of Appeals for the District of Columbia Circuit concluded in the *NuTone* case[6] that an employer's distribution of non-coercive anti-union literature during working hours is discriminatory when the employees are forbidden from disseminating pro-union literature under the same conditions, *a fortiori* that court would regard this respondent's ban on employee solicitation as invalid, for here the employer not only solicited but, in so doing, employed coercion.[7]

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[5] The question, as stated in the Government's *NuTone* petition (p. 2), is as follows: "Whether a rule prohibiting employees from distributing literature in the employer's plant, otherwise valid under the tests enunciated by this Court, becomes invalid if the employer, himself, is distributing literature setting forth his own non-coercive views concerning unionization."

[6] The *NuTone* opinion (not yet reported) is annexed to the petition in No. 785.

[7] As the court below noted, respondent did not challenge the Board's findings as to the coercive conduct of respondent's supervisors (*infra*, p. 14). The statement in the opinion (*infra*,

There is thus an irreconcilable conflict between the Fifth Circuit's position in in the instant case and the District of Columbia Circuit's decision in the *NuTone* case. An affirmance by this Court in *NuTone* would necessitate reversal here. While the Board is of the view that the Court of Appeals went too far in *NuTone*,[8] it seems plain that the position of respondent's employees (who are not parties to this suit and may not petition in their own right) should be protected until this Court has completed its review of *NuTone*.

2. We are of the view, moreover, that the decision below should be reversed irrespective of the outcome of the *NuTone* case. As already observed, this respondent's anti-union solicitation, conducted through its plant supervisors, was concededly coercive. Since such solicitation is, by any standard, unlawful, the employer, we believe, was precluded from relying upon its rules relating to solicitation as a basis for discharging employees who adopted the tactic of pro-union solicitation during working hours. Cf. *Republic Aviation*

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p. 5) that no "solicitation in violation of the rule had ever been permitted" can refer only to employee solicitation, for the undisputed facts established that respondent, through its supervisors, urged employees to abandon their union, threatening them with loss of benefits if they did not (*supra*, pp. 4-5). These appeals by the employer constituted "anti-union solicitation", just as appeals to join a union and suggestions of benefits arising from membership constitute "pro-union solicitation" prohibited by respondent's rule. Since the facts as to the anti-union solicitation are unchalleged, the question whether respondent was precluded from relying on its rule in taking action against employees who solicited is strictly a legal one.

[8] In the *NuTone* petition (see p. 11, n. 6), the Solicitor General expressed no view as to the correctness of the Board's position, but urged that review by this Court was desirable in order to clarify the governing law in this field.

Corp. v. *National Labor Relations Board*, 324 U.S. 793, 805.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted and that the case should be set down for argument immediately following *National Labor Relations Board* v. *United Steelworkers of America, CIO, and NuTone, Incorporated*, No. 785, October Term, 1956, certiorari granted, 353 U. S. 921.

J. LEE RANKIN,
Solicitor General.

JEROME D. FENTON,
General Counsel,
STEPHEN LEONARD,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
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Attorney,
National Labor Relations Board.

JULY 1957.

APPENDIX

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 16243

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

versus

AVONDALE MILLS, RESPONDENT.

Petition for the Enforcement of an Order of the National Labor Relations Board, sitting at Washington, D. C.

(March 29, 1957.)

Before HUTCHESON, Chief Judge, and RIVES and BROWN, Circuit Judges.

RIVES, Circuit Judge: The National Labor Relations Board petitions the court for the enforcement of its order issued upon its decision reported at 115 N.L.R.B. 130.

In the fall of 1954, the Texile Workers Union began an organizational campaign at respondent's texile mills in Sylacauga, Pell City, and Alexander City, Alabama. The respondent employs approximately six thousand people in its nine textile mills located in seven communities in Alabama. The Eva Jane Mill and the Catherine Mill, located in Sylacauga where the respondent has its principal offices, are the ones here involved.

The respondent was organized in 1897. Its history and policies are described in a booklet entitled "An Introduction to Avondale", which recites:

"Avondale's conception of the human side of industry is progressive, dynamic—never static. It began when this business began, and has developed through the years, always endeavoring to keep pace with the nation's steadily advancing standard of living. This has found expression in a constantly broader appreciation of recreational, social, health, cultural, and security programs, all of which have been developed in cooperation with employee groups.

* * * * *

Avondale considers the relationship with its employees to be a partnership in which benefits and adversities are shared as all strive together to make the organization a better and more successful one. As is true in all partnerships, each individual should make his maximum contribution to the program."

The booklet, of some fourteen printed pages, describes what it refers to as Avondale's program for profit-sharing, vacations, insurance, promotion, recreation, community activities, educational program, etc.; and refers to a smaller separate pamphlet entitled "Procedure for Handling Employee Problems or Complaints," which details five steps an employee may take in bringing a problem or complaint from his assistant foreman up to and including the president of the company.

Other than the two pamphlets mentioned, the consistent policy of the company has been not to have written rules, but to rely upon rules and policies evolved from and proved workable in custom and practice, including a practice not to discipline an employee for violation of a rule until the rule had been

expressly called to his attention and he had been advised that future violations would result in discharge or discipline. Such matters as hours of work, lunch periods, order in the plant, quality standards, etc. were all regulated by custom and no written rules were posted in the plant. The Trial Examiner found, as the evidence shows: "The plant rules being unwritten, were matters of custom, some possibly dating back nearly 60 years."

The company makes no effort to prohibit general discussions of any matter whatever by employees in its plants during nonwork time. It has, however, prohibited solicitation within its plants during actual work time for any purpose, or cause, other than the annual Red Cross charity solicitation. As the Trial Examiner found, "The invoking of this rule against union solicitation and the subsequent discharge of employees alleged to have violated the rule constitutes the most important feature of this case."

The Trial Examiner found that,

> "By interrogating its employees concerning their union sentiments and activities, soliciting employees to withdraw their membership cards from the Union, and threatening to close down the plant if the Union came in, and threatening to take out certain benefits, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8 (a)(1) of the Act."

No exceptions to these findings were filed, and they were adopted by the Board. There is no defense to the Board's Order so far as it is based on such findings, and to that extent, of course, it is enforced.

The Trial Examiner further found that the General Counsel had failed to prove that the company, in violation of Section 8(a)(1) of the Act, either promulgated or invoked the rule against union solicitation for discriminatory reasons. He therefore concluded that the company did not violate Sections 8(a)(1) and (3) of the Act when it discharged employees Jones, Rich and Parker for violating this rule. The Board did not agree with such findings and conclusion, and further held that Jones' discharge was discriminatory in any event.

The issues here are: 1. Whether substantial evidence on the record as a whole supports the Board's finding that the company's no-solicitation rule was invoked and applied for discriminatory reasons, and 2., assuming that it was not, whether there is other substantial evidence to support the Board's finding that respondent discriminatorily discharged employee Jones.

There is and can be no dispute that the company had a right to prohibit union solicitation in its plant during working hours.[1] An otherwise valid no-solicitation rule, however, cannot be invoked or applied for a discriminatory anti-union purpose.[2] There was no dispute in the evidence that solicitation of union membership during work hours had interfered with production and plant efficiency, and that when that became obvious the company took action by making its em-

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[1] Republic Aviation Corp. v. N.L.R.B., 324 U.S. 793, 797, 798, 803, n. 10, approving Peyton Packing Co., 49 NLRB 828, 843-844, enforced by this Court, 142 F. 2d 1009, 1010.

[2] Peyton Packing, supra; see also N.L.R.B. v. William Davies Co., 7th Cir., 135 F. 2d 179, 181, certiorari denied 320 U.S. 770; Carter Carburetor Corp. v. N.L.R.B., 8th Cir., 140 F. 2d 714, 716-717; N.L.R.B. v. The Denver Tent and Awning Co., 10th Cir., 138 F. 2d 410.

ployees aware of the no-solicitation rule in the same manner that it made them aware of its other rules. That much the company had a right to do. The fact that the rule had not been posted on the bulletin board, or otherwise publicized, before the occasion for its use arose is consistent with the company's practice as to all of its rules. The evidence fails to establish that any solicitation in violation of the rule had ever been permitted. Nor does the fact alone that the company was opposed to the union, as was its lawful right, furnish substantial evidence of an unlawful and discriminatory purpose in invoking and applying its no-solicitation rule. On the first issue, then, we agree with the Trial Examiner, and find that there was no substantial evidence to support the Board.

On the second issue, whether employee Jones was, nevertheless, discriminatorily discharged, we think that the Board's findings, though contrary to those of the Examiner, are supported by substantial evidence on the record as a whole, and, hence, should be sustained by us. *N.L.R.B. v. Akin Products Co.*, 5th Cir., 209 F. 2d 109, 111. Jones was "the outstanding union adherent in the plant," according to the Trial Examiner. There was substantial evidence tending to establish the following facts: In addition to warning Jones and reading him the no-solicitation rule, the company sent its personnel clerk, Cleghorn, to make an appeal to him to stop his union activity. When discharged, Jones denied, with considerable reason, that he had solicited Nicholson, who had informed against him, and asked for a chance to prove his innocence. Instead, the foreman told him that he could go see Mr. Fred Halstead, the union organizer. When Jones appealed his discharge, he was met with similar remarks from the superintendent and from the general superintendent. Without detailing the other matters men-

tioned by the Board, we hold that there was substantial evidence to support its findings on this second issue.

In accordance with the foregoing opinion, the Board's order is in part enforced and in part denied enforcement.

ENFORCED IN PART AND DENIED IN PART.

JUDGMENT

Extract from the Minutes of March 29, 1957

No. 16243

NATIONAL LABOR RELATIONS BOARD

versus

AVONDALE MILLS

This cause came on to be heard on the Petition of the National Labor Relations Board for the Enforcement of an order of the National Labor Relations Board, made on March 20, 1956, the consolidated proceeding known upon the records of the Board as "Avondale Mills and Textile Workers Union of America, AFL-CIO, Cases Nos. 10-CA-2200 and 10-CA-2274," and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the Order of the National Labor Relations Board in this cause be, and the same is in part enforced and in part denied enforcement.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 16243

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

AVONDALE MILLS, RESPONDENT

DECREE ENFORCING, IN PART, AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before: HUTCHESON, Chief Judge, and RIVES and BROWN, Circuit Judges.

By the Court:

This cause came on to be heard upon the petition of the National Labor Relations Board to enforce its order dated March 20, 1956. The Court heard argument of respective counsel on February 19, 1957, and has considered the briefs and the transcript of record filed in this cause. On March 29, 1957, the Court, being fully advised in the premises, handed down its decision enforcing in part and denying in part the Board's Order. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that the Respondent, Avondale Mills, Sylacauga, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Textile Workers Union of America, AFL-CIO, or in any other labor organization of its employees, by discharging its employees or in any other manner discriminating against them in regard to their hire or tenure of employment

or any term or condition of employment, except to the extent permitted by Section 8 (a) (3) of the National Labor Relations Act (hereinafter called the Act).

(b) Interrogating its employees concerning their union membership, views, or activities in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act; threatening employees with loss of employment, loss of benefits, or a plant shutdown, if Textile Workers Union of America, AFL-CIO, organized its plant; and soliciting employees to withdraw their membership from the said Union.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Textile Workers Union of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board has found will effectuate the policies of the Act:

(a) Offer James M. Jones full and immediate reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered as a result of the discrimination, in the manner set forth in the section of the National Labor Relations Board's Decision and Order, dated March 20, 1956, entitled "The Remedy."

(b) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of employment under the terms of the Decree.

(c) Post at its plants and offices at Sylacauga, Alabama, copies of the notice attached hereto marked "Appendix." Copies of said notice, to be furnished by the Regional Director for the Tenth Region of the National Labor Relations Board (Atlanta, Georgia), shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(d) Notify the aforesaid Regional Director in writing, within ten (10) days from the date of this Decree, as to what steps it has taken to comply herewith.

Entered: May 20, 1957.

APPENDIX

NOTICE TO ALL EMPLOYEES PURSUANT TO

a Decree of the United States Court of Appeals enforcing in part an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, notice is hereby given that:

WE WILL NOT discourage membership in Textile Workers Union of America, AFL-CIO, or in any other labor organization of our employees, by discharging any employees or in any other manner discriminating against them in regard to their hire or tenure of employment or any term or condition of employment, except to the extent permitted by Section 8(a)(3) of the National Labor Relations Act.

WE WILL NOT interrogate our employees concerning their union membership, views, or activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act; threaten our employees with loss of employment, loss of benefits, or with a plant shutdown, if Textile Workers Union of America, AFL-CIO, organized our plant; or solicit employees to withdraw their membership from the said Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form labor organization, to join or assist the above-named labor organization, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent

that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

WE WILL offer James M. Jones full and immediate reinstatement to his former or substantially equivalent position, without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination against him in the manner set forth in "The Remedy" section of the National Labor Relations Board's Decision, dated March 20, 1956.

All our employees are free to become, remain, or to refrain from becoming or remaining, members of Textile Workers Union of America, AFL-CIO, or any other labor organization, except to the extent that this right may be affected by an agreement authorized by Section 8(a)(3) of the Act.

AVONDALE MILLS,
(Employer)

Dated, _____

By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 16,243

NATIONAL LABOR RELATIONS BOARD, PETITIONER

versus

AVONDALE MILLS, RESPONDENT

Petition for the Enforcement of an Order of the National Labor Relations Board, sitting at Washington, D. C.

(May 3, 1957)

ON PETITION FOR REHEARING

Before HUTCHESON, Chief Judge, and RIVES and BROWN, Circuit Judges.

PER CURIAM:

The petition for rehearing in the above styled and numbered cause is hereby

DENIED.

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